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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Katrina Perkins Steinberger,

10 Plaintiff,

11 v.

12 IndyMac Mortgage Services, et al.,

13 Defendants.  
14

No. CV-15-00450-PHX-ROS

**ORDER**

15 Plaintiffs seek a stay of the Judgment and Decree of Foreclosure entered on  
16 January 23, 2017. Plaintiffs argue Arizona law applies and, under that law, they are  
17 entitled to a stay without posting a supersedeas bond. Defendants agree that Arizona law  
18 applies but, under their view, that law allows for a stay only upon Plaintiffs posting a  
19 supersedeas bond in the amount of \$765,248.23. Both sides cite Federal Rule of Civil  
20 Procedure 62(f) as requiring application of Arizona law. Neither party, however, cites  
21 authority establishing application of that rule to the present circumstances. Because they  
22 have not established Rule 62(f) applies, Plaintiffs' motion will be denied.

23 Federal Rule of Civil Procedure 62(f) provides "[i]f a judgment is a lien on the  
24 judgment debtor's property under the law of the state where the court is located, the  
25 judgment debtor is entitled to the same stay of execution the state court would give."  
26 Plaintiffs claim the judgment of foreclosure is, in fact, a "lien" on their property such that  
27 Arizona law should determine whether a stay of execution is appropriate. Defendants  
28 agree Rule 62(f) applies but, upon review and analysis, Arizona law would not recognize

1 the judgment entered in this case as a lien. Therefore, Rule 62(f) does not apply.

2 There is no explanation offered by the parties why, under Arizona law, the  
3 judgment of foreclosure in this case constitutes “a lien on the judgment debtor’s  
4 property.” Fed. R. Civ. P. 62(f). The mere fact that some form of judgment was entered  
5 does not mean the judgment qualifies as a “lien” under Rule 62(f). When interpreting  
6 Rule 62(f), another Arizona district judge noted “[m]any courts have held that Rule 62(f)  
7 does not apply if a judgment creditor must take further action on a judgment before a lien  
8 arises under state law.” *Wichansky v. Zowine*, No. CV-13-01208-PHX-DGC, 2016 WL  
9 3345481, at \*2 (D. Ariz. June 16, 2016). And “[i]n Arizona, a judgment creditor must  
10 take several steps to obtain a judgment lien.”<sup>1</sup> *Id.* Therefore, the judgment in this case is  
11 not automatically a lien under Arizona law.<sup>2</sup>

12 Additional evidence that the judgment in this particular case does not qualify as a  
13 lien comes from the statute specifying when a judgment may “become a lien.” A.R.S. §  
14 33-961. To eventually become a lien, a judgment must contain certain information.  
15 A.R.S. § 33-961 (listing five items judgment must contain). The judgment in this case  
16 does not contain all the required information. *Id.* (requiring the judgment contain the  
17 “Attorney of record for the judgment creditor”). Accordingly, the judgment in this case  
18 was not automatically a “lien” and, in fact, cannot “become a lien” absent Defendants  
19 taking additional steps. A.R.S. § 33-961(A). Plaintiffs’ request for a stay under Rule  
20 62(f) will be denied.

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25 <sup>1</sup> There is no evidence here that Defendants have taken the requisite steps to obtain  
26 a judgment lien.

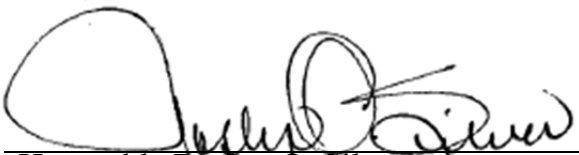
27 <sup>2</sup> The statute governing judgments in judicial foreclosure cases states, in relevant  
28 part, “[j]udgments for the foreclosure of mortgage and other liens shall provide that the  
plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff’s lien on  
the property subject to the lien.” A.R.S. § 33-725(B). That statute, however, does not  
provide any indication that such judgments are, in fact, additional liens.

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Accordingly,

**IT IS ORDERED** the Motion to Stay and Approve No Supersedeas Bond (Doc. 213) is **DENIED**.

Dated this 1st day of February, 2017.

A handwritten signature in black ink, appearing to read 'Roslyn O. Silver', written over a horizontal line.

Honorable Roslyn O. Silver  
Senior United States District Judge